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TO AMEMBASSY MEXICO

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VISAS

E.O. 11652:N/A

TAGS:ELAB, PFOR, MX

SUBJECT: SUPREME COURT DECISION ON CALIFORNIA EMPLOYMENT
LAW

REF: EMBASSY'S 2507

1. ON FEBRUARY 25 THE SUPREME COURT HELD NOT UNCONSTITUTIONAL ON ITS FACE A SECTION OF THE CALIFORNIA LABOR CODE WHICH PROHIBITS AN EMPLOYER FROM KNOWINGLY EMPLOYING ALIENS NOT ENTITLED TO LAWFUL RESIDENCE IN U.S. IF SUCH EMPLOYMENT WOULD HAVE AN ADVERSE EFFECT ON LAWFUL RESIDENT WORKERS. CONCEDING THAT POWER TO REGULATE IMMIGRATION IS EXCLUSIVELY A FEDERAL POWER, THE COURT HELD MERE FACT ALIENS ARE THE SUBJECTS OF THE CALIFORNIA STATUTE DID NOT OF ITSELF RENDER STATUTE A REGULATION OF IMMIGRATION VIOLATIVE OF
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CONSTITUTION.

2. THE SUPREME COURT FURTHER CONCLUDED THAT THROUGH ENACTMENT OF INA THE CONGRESS HAD NOT PRE-EMPTED STATES FROM ENACTING LAWS VITAL TO FISCAL INTERESTS WHICH WERE NOT INCONSISTENT WITH THE PARAMOUNT FEDERAL LEGISLATION AND SINCE CONGRESS HAD NOT UNMISTAKABLY ORDAINED THE EXCLUSIVITY OF FEDERAL REGULATION ON THE SUBJECT OF ALIENS IN GENERAL OR THE EMPLOYMENT OF ILLEGAL ALIENS IN PARTICULAR THE CALIFORNIA STATUTE IS NOT INVALID UNDER THE SUPREMACY CLAUSE OF THE CONSTITUTION.

3. THE COURT REMANDED THE CASE TO THE CALIFORNIA COURTS TO DECIDE IN THE FIRST INSTANCE WHETHER THE STATUTE MIGHT BE UNCONSTITUTIONAL BECAUSE ITS APPLICATION AND ENFORCEMENT WOULD IMPAIR THE PURPOSES AND OBJECTIVES OF THE CONGRESS IN ENACTING THE IMMIGRATION AND NATIONALITY ACT. SPECIFICALLY, THE STATUTE REQUIRES THAT AN ALIEN BE ENTITLED TO LAWFUL RESIDENCE TO BE EMPLOYED BUT THE IMPLEMENTING REGULATIONS DEFINE AN ALIEN ENTITLED TO LAWFUL RESIDENCE AS ANY NON-CITIZEN OF THE UNITED STATES WHO IS IN POSSESSION OF AN I-151, ALIEN REGISTRATION RECEIPT CARD, OR ANY OTHER DOCUMENT ISSUED BY THE IMMIGRATION AND NATURALIZATION SERVICES WHICH AUTHORIZES HIM TO WORK. THUS, QUESTION FOR CALIFORNIA COURTS ON REMAND IS WHETHER AND TO WHAT EXTENT APPLICATION AND ENFORCEMENT OF STATUTE WOULD CONFLICT WITH THE INA OR OTHER FEDERAL LAW OR REGULATIONS PERMITTING ALIENS NOT ENTITLED TO LAWFUL RESIDENCE IN THE UNITED STATES TO WORK HERE.

4. VIEW EARLIER DECISIONS BY CALIFORNIA COURTS THAT STATUTE IS UNCONSTITUTIONAL FOR SEPARATE REASON THAT IT FAILS TO PROVIDE DEGREE OF CERTAINTY REQUIRED TO MEET CONSTITUTIONAL DUE PROCESS REQUIREMENTS IMPLICATION OF SUPREME COURT DECISION ON OUT OF STATUS ALIENS IN CALIFORNIA, PENDING FURTHER COURT DECISIONS, WILL BE NIL. IF LAW ULTIMATELY FOUND TO BE CONSTITUTIONALLY VALID IT WOULD HAVE SIGNIFICANT EFFECT ON VISA WORKLOAD AT CONSULAR POSTS IN MEXICO AND ON ISSUANCE DATES FOR WESTERN HEMISPHERE APPLICANTS ALREADY REGISTERED LIMITED OFFICIAL USE

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BECAUSE MANY OF SEVERAL HUNDRED THOUSAND MEXICAN ILLEGALS IN CALIFORNIA MIGHT APPLY FOR VISAS BASIS THEIR ENTITLEMENT TO DERIVATIVE PRIORITY DATES AND FEAR OF LOSING EMPLOYMENT WITHOUT LAWFUL PERMANENT STATUS.

5. DEPARTMENT PERCEIVES NO OBJECTION TO EMBASSY'S TRANSMISSION OF ANALYSIS IN PARAGRAPH 1 THROUGH 3 THIS PUBLIC DECISION TO FOREIGN SECRETARIAT FOR INFOR-

MATION MEXICAN COMMISSION ON ILLEGALS. KISSINGER

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